IN THE PUNJAB AND HARYANA HIGH COURT AT
CHANDIGARH

C.R. No. 6486 of 2006 (O&M)

Date of Decision : 8.10.2007

Balkar Singh

.....Petitioner

Versus

Gurdip Singh

.....Respondent

CORAM : HON'BLE MR. JUSTICE VINOD K. SHARMA

Present : Mr. V.K. Sandhir, Advocate
for the petitioner.

Mr.K.S. Rekshi, Advocate
for the respondent.

****

VINOD K. SHARMA, J. (ORAL)

C.M. No. 18474-CII of 2007

C.M. is allowed. The main case is taken up for hearing today.

C.R. No. 6486 of 2006

This revision petition has been filed against the order dated 24.11.2006 passed by the Commissioner, Municipal Corporation, Amritsar exercising the powers of Election Tribunal vide which recounting of votes has been ordered.

The operative part of the order reads as under :-

"After hearing the arguments of learned counsel for both the parties and perusal of record produced by both the parties in their evidence, I reach to the conclusion that as per the principle of natural justice and justice should not only be done but it should also look to have been done and to bring out the

truth it would not be improper to carry out recounting and one of the party would have any loss under the shadow of truth. Therefore to decide this case the recounting of votes of this election is very much necessary so that the truth should come out, whether the election of respondent was proper. Therefore this file be put up on 1/12/06 for recounting of votes in the presence of Presiding Officer. Summons be issued to Presiding Officer for date fixed."

This order has been passed in spite of objection raised by the learned counsel for the petitioner to the effect that the plea for recounting was baseless as no such prayer was made in the petition and, therefore, it was not open to the Election Tribunal to order the recounting of votes.

Mr. V.K. Sandhir learned counsel appearing on behalf of the petitioner has challenged the impugned order on the plea that the impugned order cannot be sustained as it is not open to the Election Tribunal to order the recounting of votes on mere asking of the party. The recount can only be ordered if sufficient material has been placed on record after laying foundation for the same in the Election Petition. In support of this contention the learned counsel for the petitioner places reliance on the judgment of the Full Bench of this Court in the case of ***Radha Kishan Vs. The Election Tribunal cum Sub Judge, Hissar 1999(4) RCR (Civil) 79.***

The learned counsel appearing on behalf of the respondent concedes that the impugned order cannot be sustained in view of the authoritative pronouncement by the Full Bench of this Court in the case of ***Radha Kishan Vs. The Election Tribunal cum Sub Judge, Hissar*** (supra).

In view of the authoritative pronouncement of this Court as well as the concession given by the learned counsel for the respondent, this revision petition is allowed and the impugned order is set aside.

The learned Election Tribunal is, therefore, directed to proceed with the matter in accordance with law.

8.10.2007 **(VINOD K. SHARMA)**
'sp' **JUDGE**